IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 07.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Writ Appeal No.584 of 2006
and
WAMP Nos.1212 and 1213 of 2006

N.Nethaji ... Appellant
(Petitioners in WP.24093/05
on the file of the
High Court, Madras)

vs.

1. The Director of Sugars,
690, Anna Salai, Chennai-600 035.

2. The Special Officer/Chairman,
Dharmapuri District Co-operative
Sugar Mills Polytechnic College,
Palacode, Dharmapuri District,
Pincode-636 808.

3. M.Ramu
4. S.Selvaraj ... Respondents
(Respondents in -do-)

Appeal under Clause 15 of the Letters Patent against the order of the learned single Judge, dated 03.03.2006, made in W.P.M.P. No.26271 of 2005 in W.P. No.24093 of 2005.
discard

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For Appellant : Mr.N.G.R.Prasad,
for Mr.K.Chozhan.
For R-1 : Mr.C.Thirumaran,
Government Advocate.
For R-2 to R-4 : Mrs.G.Thilagavathy.

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J U D G M E N T

P.SATHASIVAM, J.

By consent of all the parties, the Writ Appeal itself is taken up for disposal.

2. The above Writ Appeal is directed against the Order of the learned single Judge, dated 3.3.2006, made in WPMP No.26271 of 2005 in WP No.24093 of 2005, in and by which, the learned Judge refused to grant interim order of injunction in respect of promotion of respondents 3 and 4.

3. The appellant herein/writ petitioner before the single Judge challenged the order of the first respondent, according Permission to the second respondent to upgrade the third and fourth respondents as Associate Lecturers as per G.O.Ms. No.1146, dated 25.11.1992, on completion of their 5 years of service from their initial post of Instructors commencing from 1986 overlooking the petitioner's seniority retrospectively.

4. According to the petitioner, he joined the services in the Dharmapuri District Co-operative Sugar Mills Polytechnic College, the second respondent, on 25.06.1991 as Associate Lecturer (Mechanical Engineering Department). He was a Bachelor Degree holder in B.E. (Mechanical Engineering) and later, on 20.12.2001, he was upgraded as Senior Lecturer (Mechanical Engineering Department). Subsequently, he was designated by the Administrative Committee as Head of the Department (in charge) for Mechanical Tool and Die Department with effect from 01.06.2005. It is the grievance of the petitioner that, if the impugned permission of the first respondent is given effect by the second respondent and the 3rd and 4th respondent are upgraded, he will ultimately lose his seniority and thereby his present Head of the Department / in-charge position will also be disturbed. It is also the claim of the petitioner that M.Ramu-third respondent and S.Selvaraj-4th respondent joined the service during 1985-86 in the 2nd respondent college as Instructors with Diploma Qualification, that is, D.M.E. In 1992, they completed the degree/Equivalent Qualification and were promoted as Associate Lecturers with effect from 30.11.1992 and 31.12.1992 respectively.

As per G.O. Ms. No.1081, Education (J-I) Department, dated 19.8.1989, the minimum qualification for appointment to the post of Associate Lecturer will be First Class Bachelor Degree in the relevant discipline. However, the existing Teachers (Instructors holding diploma qualification) will be allowed to continue in their present level. They will have to acquire the required Degree

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qualification to advance further in their present level, however, the existing Instructors shall be promoted as Associate Lecturers as and when they acquire degree qualification. Prior to G.O. Ms. No.1081, dated 19.8.1989; G.O.Ms.721, dated 28.4.1981, was in force. As per G.O. No.721, Education Department, dated 28.4.1981, the Instructors are eligible for promotion to the post of Associate Lecturers only after completion of 10 years' service in the feeder category of Instructor Posts in Polytechnic Colleges.

It is also the case of the petitioner that the second respondent Polytechnic College had come into being only during 1984-85 and the instructions existed then in para No.3(1) of G.O.Ms. No.721, Education Department, dated 28.4.1981, and G.O.Ms. No.1146, Education (1) Department, dated 25.11.1992, were not followed since no Instructor has completed either 10 years or 5 years of service. Meanwhile, G.O. Ms.1081, Education (J-1) Department, dated 19.8.1989, was issued, hence, the second respondent followed the latter G.O. and appointed the petitioner as Associate Lecturer.

5. Mr.N.G.R.Prasad, learned counsel appearing for the appellant, by drawing our attention to all the relevant details, submitted that the permission accorded by the first respondent, in his order dated 29.06.2005, to the second respondent to upgrade the third and fourth respondents to the post of Associate Lecturer from the date of completion of five years of service in their initial post of Instructors commencing from 1986 as per the Government Order dated 25.11.1992 is against the provisions and cannot be accepted. He also contended that it is against the instructions as stipulated in G.O. Ms. No.1081 Education (J-1) Department dated 19.08.1989 which is in vogue at present.

6. Mrs.G.Thilagavathy, appearing for respondents 2 to 4, refuted the above contentions.

7. We verified G.O.Ms. No.1081 Education (J-1) Department, dated 19.08.1989, as well as G.O. Ms. No.1146, Education (1) Department, dated 25.11.1992, and the service particulars of the petitioner as well as respondents 3 and 4. The particulars furnished show that the petitioner was appointed as Associate Lecturer even on 25.06.1991, whereas, respondents 3 and 4 were appointed as Instructors in 1985-86. The third respondent completed the degree and was upgraded as Associate Lecturer on 30.11.1992 and respondent No.4 completed A.M.I.E (equivalent to degree) and was upgraded as Associate Lecturer on 31.12.1992. It is not in dispute that the petitioner was appointed as Associate Lecturer in June, 1991, having B.E. qualification, on the other hand, 3rd and 4th respondents acquired degree qualification for the post of Associate Lecturer only in November and December, 1992. In other words, respondents 3 and 4 acquired degree qualification only subsequent to

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the appellant/petitioner's appointment. This relevant aspect was not considered by the learned Judge while passing order in WPMP No.26271 of 2005.

8. As rightly pointed out by Mr. N.G.R.Prasad, though the impugned order was passed on 29.06.2005, writ petition was filed on 25.07.2005 and notice was ordered on 28.07.2005; in such circumstances, the petitioner cannot be blamed and there is no delay or laches on his part. In view of the fact that the petitioner was directly appointed as Associate Lecturer even on 25.06.1991 and that respondents-3 and 4 acquired degree qualification for the post of Associate Lecturer only on 30.11.1992 and 31.12.1992 respectively, ie., subsequent to the petitioner's appointment as Associate Lecturer, prima facie, we are satisfied that the impugned order passed by the first respondent, permitting the second respondent for giving retrospective promotion to respondents-3 and 4, revising the seniority, is not warranted. We are also of the view that the benefit of upgradation is applicable only to the eligible candidates as on 1.12.1977. It is not in dispute that respondents-3 and 4 completed their 5th year of service only on 5.3.1991 and 10.3.1991 respectively. In such circumstances, we are satisfied that the petitioner has made out a prima facie case and that the learned Judge ought to have granted the interim order in the Miscellaneous Petition. It is also brought to the notice of this Court that, as on date, the petitioner continues to be the Head of Department-in charge.

9. In such circumstances, the order passed in WPMP No.26271 of 2005 in W.P. No.24093 of 2005, dated 3.3.2006, is set aside. There shall be an order of injunction as prayed for by the petitioner till the disposal of the Writ Petition. Writ Appeal is allowed. No costs. Connected Miscellaneous Petitions stand closed.

JI.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Director of Sugars, 690, Anna Salai, Chennai-600 035.

2. The Special Officer/Chairman, Dharmapuri District Co-operative Sugar Mills Polytechnic College,
Palacode, Dharmapuri District, Pincode-636 808.

3. The Section Officer,
Writ Section,
High Court, Madras.

1 cc to Mr.K.Chozhan, Advocate, SR.29286

1 cc to Mrs.G.Thilagavathy, Advocate, SR.29238

jrg (co)

dv/14.7.06

Judgment in
W.A. No.584 of 2006
& connected WAMPs.

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